No. 89-1166

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ARTHUR GROVES, BOBBY J. EVANS and LOCAL 771, INTERNATIONAL UNION UAW,
Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR THE PETITIONERS

JORDAN ROSSEN
DANIEL W. SHERRICK
8000 East Jefferson
Detroit, Michigan 48214

WILLIAM M. MAZEY
4000 Town Center
Suite 740
Southfield, Michigan 48075

LAURENCE GOLD
(Counsel of Record)
815 16th Street, N.W.
Washington, D.C. 20006
(202) 637-5390
Attorneys for Petitioners

GEORGE KAUFMANN
2101 L Street, N.W.
Washington, D.C. 20037
Of Counsel

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

When a collective bargaining agreement between an employer and a union subject to § 301 of the Labor-Management Relations Act of 1947 does not provide for final and binding arbitration to resolve contract disputes, but does permit the parties to resort to economic weapons over such disputes—and is silent on the contract's enforceability in court—is judicial enforcement of the contract in a § 301 suit thereby precluded?

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OPINIONS BELOW

The court of appeals' opinion is reported at 822 F.2d 1061 and is reproduced at pp. 1a-12a of the appendix to the petition for a writ of *certiorari* (hereafter "Pet. App.").

The district court's orders granting the defendant's motions for summary judgment are unreported and are reproduced at Pet. App. 16a-29a.

JURISDICTIONAL STATEMENT

The court of appeals' opinion was entered on August 16, 1989. Pet. App. 1a. That court's order denying a timely petition for rehearing was entered on October 23, 1989. Pet. App. 15a. The *certiorari* petition herein was timely filed on January 22, 1990 and *certiorari* was

granted on March 19, 1990. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

This case involves § 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185, which provides in pertinent part as follows:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

Ring Screw Works ("the Company") discharged employees Arthur Groves and Bobby J. Evans; Groves for alleged absenteeism and Evans for alleged falsification of company records. Both Groves and Evans were represented for purposes of collective bargaining by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local 771 ("UAW" or "Union"). At the time in question Ring Screw Works and UAW had negotiated and were parties to collective bargaining agreements covering the Company's employees. Pet. App. 2a.

The collective bargaining agreements provide, *inter alia*, that Ring Screw Works may discharge employees only for "just cause." In addition the agreements include a grievance procedure which provides that "[s]hould a difference arise between the Company and the Union or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort will be made to settle it as follows." The agreements then set forth a four-step process, beginning with discussions between "the employee, his

steward and the foreman of his department" and culminating in Step 4 which provides in full that "[t]he Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. This may include arbitration by mutual agreement in discharge cases only." Pet. App. 3a-4a, n.2; Joint Appendix ("A.") pp. 16-17, 50-51.

Where "[a]n agreement is reached between the Company and the Shop Committee under the grievance procedure" that agreement is "binding." Where all negotiations have failed through the grievance procedure, the Union is effectively released of its no-strike pledge and the Company of its "no-lockout pledge." A. 17, 51-53. The no-strike clause in the collective bargaining agreement covering the *Groves* dispute included this no-strike clause:

> The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike, either sit-down, stay-in or any other kind of strike, or other interference, or any other stoppage, total or partial, or production at the Company's plant during the terms of this agreement until all negotiations have failed through the grievance procedure set forth herein. Neither will the Company engage in any lockouts until the same grievance procedure has been carried out. [A. 33.]

The collective bargaining agreement covering the *Evans* dispute contained the same no-strike clause but also provided that "[u]nresolved grievances (except arbitration decisions) shall be handled as set forth in [the no strike clause]." Pet. App. 3a-4a, footnote omitted; A. 53. The collective bargaining agreements are silent on the parties' right to sue over alleged conduct breaches. Pet. App. 3a-4a, 8a.

Following their discharges, both Evans and Groves sought their Union's assistance in regaining their jobs. Discussions were conducted pursuant to the collective

bargaining agreement's grievance procedure. Those discussions did not result in any settlement or compromise of the grievances. The Company refused UAW's offer to take both cases to binding arbitration. And the Union did not choose to invoke its option to strike. Pet. App. 4a-5a.

Evans and Groves, joined by their Union, then filed suit in state court to enforce the "just cause" provision of the collective bargaining agreements. Ring Screw Works removed both cases to federal district court invoking that court's jurisdiction under the federal labor law. In both cases, the district court granted summary judgment to the Company on the ground that plaintiffs were bound by the "result" of the grievance procedure and therefore could not seek judicial enforcement of the contract terms in the absence of proof that the Union violated its duty of fair representation.

The Sixth Circuit affirmed on the authority of its earlier ruling in *Fortune* v. *National Twist Drill*, 684 F.2d 374 (6th Cir. 1982). Pet. App. 4a-8a. The panel hearing this case noted, however, that "other courts in comparable circumstances have reached a decision contrary to *Fortune*" citing *Dickeson* v. *DAW Forest Products*, 827 F.2d 627 (9th Cir. 1987), and that "[w]ere we deciding the issue with a clean slate, we might be disposed to adopt the rationale of *Dickeson*." Pet. App. 8a, 11a.

SUMMARY OF ARGUMENT

1. The question in this case is whether judicial enforcement of a collective bargaining agreement subject to § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), is precluded when the agreement does not provide for final and binding arbitration to resolve contracts disputes, permits the parties to resort to economic weapons over such disputes and is silent on the contracts' enforceability in court. *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 456 (1957) instructs "that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws."

Lincoln Mills establishes also that § 301(a) itself embodies the particular legislative policies that govern this case. The Court there explained that the principal purpose of § 301(a) is to assure that collective bargaining agreements are binding and enforceable; this "will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace." *Id.* at 453, 454, quotation marks omitted. It should be wholly antithetical to these policies to construe an agreement that simply *permits* the use of economic force as *precluding* judicial enforcement. Thus, the decisions of the Seventh and Ninth Circuits which, addressing the identical question that is presented here, determined that an agreement must expressly oust the courts of jurisdiction before it will be so construed correctly capture the essence of congressional policy. See *Associated Gen Contr. of Ill.* v. *Illinois Confr. of Team.*, 486 F.2d 972 (7th Cir. 1973); *Dickeson* v. *DAW Forest Products*, 827 F.2d 627 (9th Cir. 1987).

Lincoln Mills holds further that "Congress adopted [in § 301(a)] a policy which placed sanctions behind agreements to arbitrate grievance disputes." 353 U.S. at 456. That policy is further buttressed by LMRA § 203(d) which declares that "final adjustment by a method agreed

upon by the parties is . . . the desirable method for settlement of grievance disputes. . . ." But as *Associated Contractors* recognizes, nothing in § 203(d) goes further and bespeaks a preference for strikes and lockouts over judicial enforcement of labor contracts. It is perhaps conclusive that such an extension of § 203(d) would be irreconcilable with the policy underlying § 301(a). Moreover, the key word in § 203(d)—"adjustment"—simply does not encompass the product of resort to economic weapons. This clearly appears from the use of that word in other provisions of the statute, see LMRA §§ 9(a), 201(c) and 209(a) and as a term of art in the labor field which refers to the peaceful resolution of contract disputes, see § 3 First of the Railway Labor Act which establishes the National Railroad Adjustment Board whose function is to conduct compulsory arbitration of grievance disputes under the RLA. Finally, to read § 203(d) as *favoring* strikes and lockouts would be inconsistent with the very point of LMRA Title II, as a whole which is to express a preference for peaceful means of settlement chosen by the parties. See §§ 203(c) and 204(a).

2. The court below held that the strike is petitioners' exclusive remedy for the employer's alleged breach of contract although it found that the "agreement does *not* expressly indicate whether a strike is the only option the union has if the employer refuses to submit a grievance to arbitration." Pet. App 8a, emphasis added. And that court pointed to no bargaining history or other extrinsic evidence—respondent introduced none—which would permit the conclusion that resort to the court was not to be permitted.

3. The court below reached its conclusion on the authority of its prior decision in the *Fortune* v. *National Twist Drill*, 684 F.2d 374 (6th Cir. 1982), which we submit was not soundly reasoned.

The *Fortune* court stated that in the absence of a contractual provision for arbitration "we are cited to no

provision of federal law which gives the federal courts the power to" break a deadlock dispute over a grievance. *Id.* at 375. Plainly, the Court overlooked § 301(a) which is a provision whose principal purpose is to give the federal courts the power to enforce collective bargaining agreements.

The *Fortune* court also relied on the policy of § 203(d) that, in settling grievance disputes, the method chosen by the parties should be adhered to; but the methods of peaceful adjustment referred to in that provision, like judicial contract enforcement decisions, involve addressing a grievance dispute *on its merits* rather than on the basis of the economic strength of the respective parties, which do not depend at all on the terms of the contract or the facts underlying the grievance. Thus, in contrast to arbitration, the strike and lockout are wholly unlike judicial enforcement of a contract and cannot be implied to be a substitute therefor.

Finally, the *Fortune* court relied on the well-settled principle that an employee is bound by the remedies which are bargained for by his representative. *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650 (1965). But that principle simply does not come into play in this case, where the agreement does not, expressly or fair implication of fact or law, bar the judicial remedy provided by § 301(a).

ARGUMENT

Section 301(a) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), provides that "[s]uits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States." In enacting § 301(a), then, Congress "made such agreements enforceable in the courts by either party." *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 453 (1957) ("*Lincoln Mills*").

It is our position *first*, that the governing rule of federal labor contract law here is that a collective bargaining agreement is enforceable through the usual processes of the law unless the agreement plainly and unequivocally states that it is *not* enforceable through those processes; and, *second*, that an agreement that provides for a grievance procedure that is not final and binding in the event the parties do not agree, that reserves to the parties the right to use economic force in the event of a deadlock, and that is otherwise silent on the question of enforcement does *not* plainly and unequivocally state that it is not enforceable in court.

To put it another way, our position here is that the leading court of appeals case in point—*Associated Gen. Contr. of Ill.* v. *Illinois Conf. of Team.*, 486 F.2d 972 (7th Cir. 1973) ("*Associated Contractors*")—both asks the right question and gives the right answer:

> The Union . . . makes the narrow claim that under the terms of this particular contract, the parties had agreed that deadlocked grievances would be resolved by economic recourse without resort to the courts.
>
> Unquestionably "the means chosen by the parties for settlement of their differences under a collective bargaining agreement [must be] given full play." See *United Steelworkers of America* v. *American Mfg. Co.*, 363 U.S. 564, 566. [An accompanying footnote quotes LMRA § 203(d).] But it is one thing to hold that an arbitration clause in a contract agreed to by the parties is enforceable. It is quite a different matter to construe a contract provision reserving the Union's right to resort to "economic recourse" as an agreement to divest the courts of jurisdiction to resolve whatever dispute may arise. This we decline to do.
>
> [W]e . . . do not . . . construe the agreement as requiring economic warfare as the exclusive or even as a desirable method settling deadlocked grievances . . . There is no plain language in the contract compelling parties to use force instead of reason in resolving their differences. In our view, an agreement to forbid any judicial participation in the resolution of important disputes would have to be written much more clearly than this. [486 F.2d at 976, footnotes omitted.]

See also *Dickeson* v. *DAW Forest Products Co.*, 827 F.2d 627, 629-30 ("*Dickeson*") (9th Cir. 1987) (citing and following *Associated Contractors*).

1(a). The rule of federal labor contract law stated in *Associated Contractors* and *Dickeson* follows so directly from the legislative materials as to make extensive elaboration unnecessary.

As is now familiar, in *Lincoln Mills*, the Court

> conclude[d] that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws. [Citation omitted.] The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. [353 U.S. at 456-57.]

Lincoln Mills, moreover, establishes that § 301(a) itself embodies the particular legislative policies that govern

this case. The Court there explained that the principal purpose of § 301(a) is to assure that collective bargaining agreements are binding and enforceable:

> Both the Senate and the House took pains to provide for "the usual processes of the law" by provisions which were the substantial equivalent of § 301 (a) in its present form. Both the Senate Report and the House Report indicate a primary concern that unions as well as employees should be bound to collective bargaining contracts. But there was also a broader concern—*a concern with a procedure for making such agreements enforceable in the courts by either party.* At one point the Senate Report *supra*, p. 15, states, "We feel that the aggrieved party should also have a right of action in the Federal courts. Such a policy is completely in accord with the purpose of the Wagner Act which the Supreme Court declared was 'to compel employers to bargain collectively with their employees to the end that an employment contract, binding on both parties, should be made . . . .'" [353 U.S. at 453; emphasis added.][1]

Indeed, as the Court then noted, "Congress was also interested in promoting collective bargaining that ended with agreements not to strike". *Id.* And the ultimate point of § 301(a), said the Court, was stated in

> Senate Report [No. 105, 80th Cong., First Sess.] p. 17, [which] summed up the philosophy of § 301 as follows: "Statutory recognition of the collective agreement as a valid, binding and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace.'" [353 U.S. at 454.]

It would be wholly antithetical to this legislative policy in favor of "making [labor] agreements enforceable in

[1] The respective Congressional Reports are S. Rep. No. 105, 80th Cong., First Sess.; H.R. Rep. No. 245, 80th Cong., First Sess.; H.R. Conf. Rep. No. 10, 80th Cong., First Sess.

the courts" to construe an agreement which is anything less than crystal clear in this regard as precluding judicial enforcement. And given Congress' intent in enacting § 301(a) to "promote a higher degree of responsibility upon the parties to [labor] agreements" in order to "promote labor peace", it would be particularly anomalous to construe an agreement that simply permits the use of economic force as precluding judicial enforcement. As the Ninth Circuit stated in *Dickeson*, *supra*:

> Although the right to strike is protected, it is not a preferred method for resolving differences. Prohibiting access to the courts bypasses an opportunity to use reason in favor of "economic warfare." *Associated General Contractors*, 486 F.2d at 976. Although parties to a collective bargaining agreement may choose to designate strikes as the sole means of objecting to management decisions, we think they must do so expressly before we may find judicial divestment. No preference need be accorded strikes as a noble dispute resolution mechanism. Accordingly we conclude that the grievance procedure was not intended to be final. [827 F.2d at 629-30.]

See also, pp. 8-9, *supra*, quoting *Associated Contractors*, 486 F.2d at 976.

(b) *Lincoln Mills* holds too

> that Congress adopted [in § 301(a)] a policy which placed sanctions behind agreements to arbitrate grievance disputes, by implication rejecting the common-law rule, discussed in *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U.S. 109, against enforcement of executory agreements to arbitrate. [353 U.S. 456, footnote omitted.]

In *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574, 578 (1960), the Court added:

> The present federal policy is to promote industrial stabilization through the collective bargaining agreement. . . . A major factor in achieving industrial

> peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement.

The Court then emphasized that in this context labor "arbitration is the substitute for industrial strife". *Id.* LMRA § 203(d)—which provides "final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement . . ."—of course, further buttresses the policy in favor of such final and binding arbitration of contract grievances. See, e.g., *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 566-67 (1960).

The 1947 Congress, in other words, took a broader view of the "usual processes of the law" for enforcing collective bargaining agreements than the common law had traditionally taken with regard to commercial contracts. It was Congress' judgment, embodied in §§ 301(a) & 203(d), that final and binding labor arbitration—like judicial determination of the meaning and effect of a collective bargaining agreement—is a salutory means of making such agreements enforceable and of promoting labor peace.

But as *Associated Contractors* recognizes, nothing in § 203(d) goes further and bespeaks a preference for strikes and lockouts over judicial enforcement of labor contracts. See 486 F.2d at 976, quoted at p. 9, *supra*.

It is perhaps conclusive that such an extension of § 203(d) would be irreconcilable with the policy underlying § 301(a), which, as we have just seen, strongly favors *peaceful* means of settling contract disputes. And the LMRA's language and structure confirm that there is no such conflict.

In the first place, the key word in § 203(d)—"adjustment"—as used in the LMRA, simply does not encompass results brought about by the resort to economic weapons. For example, § 209(a) provides:

> Whenever a district court has issued an order under section 208 of this Act enjoining acts or practices which imperil or threaten to imperil the national health or safety, *it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle* their differences, with the assistance of the [Federal Mediation and Conciliation] Service . . . . [Emphasis added.]

Since this provision is operative only where a strike or lockout has been enjoined pursuant to § 208, it is clear that an "effort to adjust and settle" excludes resolving a dispute by economic force. See also §§ 201(c) and 9(a) which are set forth in pertinent part in the margin, in which "adjustment" clearly does not include a strike by a union or lockout by an employer.[2]

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[2] Section 201(c) provides:

> It is the policy of the United States that—
>
> * * *
>
> certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision . . . . *for the final adjustment of grievances or questions regarding the application or interpretation of such agreements* . . . . [Emphasis added.]

Section 9(a) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 29 U.S.C. § 159(a), provides:

> Representatives designated or selected for the purposes of collective bargaining . . . shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining . . . *Provided*, That *any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted*, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present *at such adjustment*. [Emphasis added.]

Indeed, "adjustment" has been, since well before 1947, a term of art in the labor field which refers to the peaceful resolution of contract disputes. The National Railroad Adjustment Board established by § 3 First of the Railway Labor Act, 45 U.S.C. § 153 First, to take one instance, has as its function the resolution of contract disputes through peaceful processes. As stated in *Trainmen* v. *Chicago R. & I.R. Co.*, 353 U.S. 30, 39 (1957), "the provisions dealing with the Adjustment Board [are] to be considered as compulsory arbitration in this limited field", *i.e.*, the resolution of grievance disputes under the RLA.

Moreover, even if it were otherwise possible, it would be paradoxical to read § 203(d) as *favoring* strikes and lockouts over judicial enforcement of a collective bargaining agreement. The very point of LMRA Title II as a whole is to express a preference for peaceful means of settlement which are chosen by the parties. This is confirmed most clearly by § 203(c) which provides in part:

> If the Director [of the FMCS] is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute *without resort to strike, lockout, or other coercion*, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the director shall not be deemed a violation of any duty or obligation imposed by this chapter. [Emphasis added.] [3]

[3] So too, a preference for strikes as "a method of adjustment" is wholly inconsistent with the direction in § 204(a):

> In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—
>
> (1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;
>
> (2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrangement promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and
>
> (3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

An interpretation of § 203(d), which would encompass the resort to economic weapons, would also render § 204(a) inconsistent with the second sentence of § 203(d): "The [Federal Mediation and Conciliation] Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

(c) In short, § 301(a) states a preference for industrial stability during the term of a collective bargaining agreement achieved through such peaceful methods of resolving contract disputes as arbitral and judicial enforcement of the agreement's terms. Congress' judgment in that regard entails the conclusion that "[a]lthough parties to a collective bargaining agreement may choose to designate strikes as the sole means of objecting to management decisions . . . they must do so expressly before [the courts] may find judicial divestment. No preference need be accorded strikes as a noble [contract] dispute resolution mechanism." *Dickeson*, 827 F.2d at 630.

2. In holding that the strike is petitioners' exclusive remedy for an alleged employer breach of the collective bargaining agreements here, the court below did not rely on any language in the agreements which so provides. Indeed, that court found: "The agreement does *not* expressly indicate whether a strike is the only option the union has if the employer refuses to submit a grievance to arbitration." Pet. App. 8a, emphasis added.

To be sure, respondent insisted in its brief in opposition to the *certiorari* petition (at 7) that the "Union bargained for and agreed to the strike lock-out option as the final step in dispute resolution if the grievance procedure failed to resolve the matter." But respondent pointed to nothing in the agreements which provide that this "option" is the exclusive method for dispute resolution. Nor could respondent have done so. As the court of appeals found:

> Both CBAs [collective-bargaining agreements] prescribed a multi-step grievance procedure in which the employee, management representatives, and union representatives were called upon to resolve the dispute. If the parties are unable to resolve the grievance, binding arbitration is available only "by mutual agreement in discharge cases only."
>
> In addition, Groves' CBA included this no strike clause:
>
> > The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike, either sit-down, stay-in or any other kind of strike, or other interference, or any other stoppage, total or partial, or production at the Company's plant during the terms of this agreement until all negotiations have failed through the grievance procedure set forth herein. Neither will the Company engage in any lockouts until the same grievance procedure has been carried out.
>
> Evans' CBA contained the same no strike clause but also provided that "[u]nresolved grievances (except arbitration decisions) shall be handled as set forth in [the no strike clause]." [Pet. 3a-4a, footnote and emphasis omitted.]

There is simply nothing in the agreements which expressly, or by fair implication from the words, provide that where the employer has not agreed to arbitrate the dispute and the union chooses not to strike, the judicial

remedy provided for in § 301(a) would be unavailable. It is worth particular emphasis that the agreements are silent on judicial enforcement and do not contain a word stating or even suggesting that the option to use economic force is exclusive of the right to go to court created by § 301(a) itself. Nor is there any support for the decision below in the agreements' bargaining history or in any other extrinsic evidence. The employer, in seeking to prevent judicial enforcement on the grounds that the contract was understood by the parties to waive such enforcement, introduced no evidence of conduct, bargaining history or past practice in support of its position.

3. The court of appeals reached the conclusion that petitioners do not have a cause of action under § 301(a) solely on the authority of that court's prior decision in *Fortune* v. *National Twist Drill*, 684 F.2d 374 (6th Cir. 1982), which involved a collective bargaining agreement in all pertinent respects identical to that herein. See *id.*, quoted at Pet. App. 7a. We submit that *Fortune* was not soundly reasoned.

(a) The Sixth Circuit said in *Fortune*:

> Where the parties have failed to agree upon arbitration as a method of breaking a deadlocked dispute over a grievance, we are cited to no provision of federal law which gives the federal courts the power to make the decision for the parties. [684 F.2d at 375.]

We take it that the "decision" referred to is the decision as to what the labor contract means, and how the contract properly interpreted applies to the "deadlocked dispute over [the] grievance" in question. And whatever may or may not have been "cited" by the parties in *Fortune*, it is indisputable that § 301(a) *is* a "provision of federal law which gives the federal courts the power to make this decision for the parties" where they have not agreed on arbitration as the method for resolving a grievance dispute. As we have seen, the principal purpose and

function of § 301(a) is precisely to provide for the enforcement of collective bargaining agreements through the usual processes of the law. And the essence of those processes is a determination as to what the agreement means, and whether the agreement has been breached.

It is true, as *Lincoln Mills* squarely holds, that promises to arbitrate are among those that are to be enforced under § 301(a). But as the legislative materials canvassed in that opinion demonstrate, it would turn matters upside down to limit § 301(a) to enforcing promises to arbitrate. See pp. 10-11, *supra*. Not surprisingly then that provision has *not* been so limited. Thus, for example, in *Atkinson* v. *Sinclair Rfg. Co.*, 370 U.S. 238 (1962), this Court held that since the agreement between the parties did not provide for arbitration of a dispute based on the employer's claim that the union had breached the agreement, § 301(a) by its terms provides that the employer's suit against the union for that breach could go forward in court. See also, *e.g.*, *Smith* v. *Evening News*, 371 U.S. 195 (1962).

(b) The *Fortune* opinion also quotes with approval the following passage from *Haynes* v. *United States Pipe & Foundry Company*, 362 F.2d 414, 416 (5th Cir. 1966):

> Congress explicitly stated, by way of a policy, in § 203(d) of the Taft-Hartley Act, 29 U.S.C. § 173(d), that in settling grievance disputes, the Act contemplated that the method agreed upon by parties to collective bargaining agreements should be the means of settling such disputes. In suits under § 301(a), the Supreme Court construed this policy as requiring the courts to give full play to the means chosen by parties to a collective bargaining agreement for settlement of their differences. [Footnote omitted.]

In *Haynes*, the agreement provided *expressly* that decisions on a grievance "by the Plant Manager shall be final and binding upon all parties involved unless the International Vice President of the Union notifies the

Plant Manager . . . of the Union's intentions to strike in protest of such decision," and that "such strike shall commence on the fourth workday following the date said notice is mailed to the company." *Id.* at 415-416. Thus, the Fifth Circuit may well have been justified in reading that agreement as one manifesting the parties' intent to make the strike the exclusive means for resolving disputes. But as we have shown, there is no similar language in the present agreement that would justify that conclusion here.

The *Haynes* opinion goes on to state:

> Subsequent to *Lincoln Mills*, this policy of giving full play to the means chosen by the parties for resolving disputes has been given further shape in various Supreme Court opinions. Of the three available forums for the resolution of disputes—contractual grievance procedure such has arbitration, or the court, or the picket line—the Supreme Court has consistently sanctioned the one chosen by the parties in their collective agreement. Employers are denied access to the courts where the parties have previously chosen the arbitration remedy. . . . Likewise, a union has been denied access to the picket line where it has chosen arbitration. . . . The court has opened the doors of the courthouse only when the parties have chosen this forum over the others. . . . [362 F.2d at 416-17, citations omitted.]

If, by the foregoing, the Fifth Circuit meant that the "three available forums" of "arbitration, or the court, or the picket line" are in all instances mutually exclusive as a matter of law, and that this Court has so decided, that court was in error.

Lincoln Mills and its progeny do make it clear that the courts are to enforce promises to arbitrate and arbitration awards and establish as well that an agreement to arbitrate bars the courts from deciding the merits of the underlying grievance dispute. See, e.g., *AT&T Technologies* v. *Communication Workers*, 475 U.S.

643, 648-51 (1986) (summarizing the relevant principles). But those rules do not rest on any conception of "three available forums for the resolution of disputes" each in its own tightly isolated compartment. Rather, the rules on arbitration rest on the recognition that §§ 301(a) & 203(d) embody a policy in favor of final and binding labor arbitration of grievances and that a later judicial determination of the merits of the grievance would undermine the congressional purpose in making promises to arbitrate binding.[4] In contrast, as we have seen, §§ 203 (d) and 301(a) embody no such policy favoring strikes to resolve grievance disputes.

Thus, the essence of the matter here is that resort to economic weapons in the event that a contract dispute is not resolved is plainly *not* the equivalent—in practical or in congressional policy terms—of final and binding arbitration. Labor arbitration decisions, like judicial contract enforcement decisions, provide a *peaceful* means of resolving the contract dispute by *addressing its merits* in terms of what the agreement in question says and means. The enforcement of the contract in this way "promote[s] a higher degree of responsibility upon the parties," S. Rep. No. 105, 80th Cong., First Sess., *supra*, p. 10.

A strike or lockout, in sharp contrast, resolves a dispute on the basis of the economic strength of the union and the employer, which do not depend at all on the terms of the

[4] As the Court explained in *Warrior & Gulf*, *supra*:

> The labor arbitrator performs functions which are not normal to the courts; the considerations which help him fashion judgments may indeed be foreign to the competence of courts. . . . The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed. [363 U.S. at 581-82.]

The LMRA's policy in favor of final and binding arbitral proceedings is not limited to arbitration on the *Steelworkers* model. See *Truck Drivers Union* v. *Riss & Co.*, 372 U.S. 517 (1963) (enforcing the final and binding award of a joint union-employer committee). Accord: *Humphrey* v. *Moore*, 375 U.S. 335, 351 (1964).

contract or the facts underlying the grievance. The prevailing party's position may be squarely contrary to the agreement's language and bargaining history and to the true meeting of the minds that occurred when the contract was formed. Indeed, what the agreement means and what the parties intended in making the agreement are entirely immaterial in determining who will prevail in the strike or lockout.

Dispute resolution through economic strength, then, has nothing to do with the merits of the grievance or with "promoting industrial peace" through "valid, binding and enforceable contract[s]," S. Rep. No. 105, 80th Cong., First Sess., *supra*, p. 17. Such dispute resolution, in short, is wholly unike that of enforcement of a contract through the usual processes of the law.

(c) The *Haynes* and *Fortune* opinions relied also on the well-established rule that the remedy selected by the union as his agent is binding on the individual employee who has a contractual grievance. See 362 F.2d at 417, citing *Republic Steel* v. *Maddox*, 379 U.S. 650 (1965); 684 F.2d at 375, citing *Harris* v. *Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167 (5th Cir. 1971). This was also the principal theme of respondent's brief in opposition.

The *Republic Steel* rule is an important adjunct of the policy embodied in § 203(d).[5] But the proposition that

[5] In *Republic Steel*, Justice Harlan stated, in part:

> A contrary rule which would permit an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it. In addition to cutting across the interests already mentioned, *it would deprive employer and union of the ability to establish a uniform and exclusive method for orderly settlement of employee grievances.* If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation "would inevitably exert a disruptive influence upon both the negtoiation and administration of collective agreements." *Teamsters Local* v. *Lucas Flour Co.*, 369 U.S. 95, 103 [379 U.S. at 653, emphasis added.]

the employee is limited to the remedies provided by the contract *invites* the question: "What remedies does the contract provide?"; it does not answer that question. Nor does that proposition answer the question whether a particular remedy is exclusive where the contract is silent in this regard.

In *Haynes*, the contract could fairly be read to provide expressly that the strike would be the exclusive method; therefore, under the *Republic Steel* rule, the employees' suit was properly dismissed. But here—as in *Fortune*—the contract does not so state. It is necessary to look to policies other than that which makes the parties' choice of remedies exclusive to resolve that question. And, as we have seen, the legislative policies which *are* germane to this issue point uniformly and unequivocally to the conclusion that recourse to the courts should be permitted.

The Sixth Circuit in *Fortune* thus profoundly misunderstood the national labor policy at every step in its analysis. It is the Seventh and Ninth Circuits' conclusion in *Associated Contractors* and *Dickeson*—that collective bargaining agreements which permit strikes to resolve grievance disputes should *not* be construed to negate the § 301(a) right to judicial enforcement unless the agreement expressly so provides—that captures the essence of the federal law of labor contracts.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

JORDAN ROSSEN
DANIEL W. SHERRICK
8000 East Jefferson
Detroit, Michigan 48214

WILLIAM M. MAZEY
4000 Town Center
Suite 740
Southfield, Michigan 48075

LAURENCE GOLD
(Counsel of Record)
815 16th Street, N.W.
Washington, D.C. 20006
(202) 637-5390

Attorneys for Petitioners

GEORGE KAUFMANN
2101 L Street, N.W.
Washington, D.C. 20037

Of Counsel